

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOLARCITY CORP.

and

Case 32-CA-180523

RAVI WHITWORTH

NOTICE TO SHOW CAUSE<sup>1</sup>

On September 8, 2017, Administrative Law Judge Eleanor Laws issued a decision in this case. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

This case involves complaint allegations that the Respondent's various arbitration agreements violate Section 8(a)(1) of the National Labor Relations Act based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), that held an employer's maintenance of a facially neutral work rule would be unlawful "if employees would reasonably construe the language to prohibit Section 7 activity." *Id.* at 647. Recently, the Board overruled the *Lutheran Heritage* "reasonably construe" test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017).

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<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Chairman Ring, who is recused, is a member of the panel but took no part in the consideration of this case on the merits. Member Emanuel is also recused, and took no part in the consideration of this case. In *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum of a panel when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 560 U.S. at 688; see also *Correctional Medical Services, Inc.*, 356 NLRB 277, 277 fn. 1 (2010).

Accordingly, the Board hereby issues the following notice to show cause why this proceeding should not be remanded to the judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

**NOTICE IS GIVEN** that any party seeking to show cause why this case should not be remanded to the administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before November 5, 2018. (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C. October 22, 2018.

By direction of the Board:

Farah Z. Qureshi

Associate Executive Secretary